THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.23426 OF 2004

DATE:07th September 2006

Between:
A.P. State Trading Corporation Limited,
Rep. by its Managing Director,
Fathemaidan Road, Hyderabad.

... Petitioner.

And

1. The State of A.P., rep. by its Secretary,
   Civil Supplies Dept., Secretariat
   Buildings, Hyderabad and another.

... Respondents.

* * *

ORDER:

This writ petition is filed by the A.P. State Trading Corporation Limited, represented by its Managing Director, seeking a writ of Mandamus declaring action of the respondent No.2 in refusing to refund a sum of Rs.52,69,400/- to the petitioner which was collected for issuance of permits for exporting para-boiled non-Basumati rice by the Corporation, as illegal and void; and consequently to direct the respondents to refund the said amount with interest at 12% per annum from the date of remittance till the date of realization.

2. It seems that the State Government imposed fee at the rate of Rs.10/- per metric ton for issuance of export permits vide Memo dated 22.8.1995. The said fee was enhanced to Rs.100/- per

metric ton with effect from 27.11.1995. Consequently, the respondents withheld issuance of export permits insisting for payment of a sum of Rs.100/- per metric ton. Therefore, the petitioner corporation was forced to pay fee at the rate of Rs.100/- per metric ton to export the rice procured. Thus, the corporation paid a sum of Rs.52,69,400/- to the respondents from time to time through their sub-contractors the details of which are furnished. While so, a writ petition No.6033 of 1997 and batch were filed before this court questioning the levying and collecting fee by the respondents at the rate of Rs.100/- per metric ton for the purpose of obtaining export permits for export of rice. This Court allowed the writ petitions by an order-dated 12.11.2002 holding that there is absolutely no specific provision of law, which empowers the State Government to impose and collect fee in respect of the rice exported by the petitioners. Hence, the collection of fee was declared as illegal and without jurisdiction. In view of the said judgment the petitioner corporation demanded vide letter dated 29.7.2003 addressed to the second respondent to refund the remitted amount towards fee. Since there was no response, they filed the present writ petition.

3. Though no counter is filed, learned Government Pleader strenuously contended that the matter is no more *res integra*. The issue in the said writ petition is squarely covered by the judgment in W.P.No.6222 of 2003 dated 09th April 2003 wherein it was held thus:

> " The Supreme Court held in catena of decisions that even

> in cases where the courts find that levy of a fee or tax is impermissible, directions for refund of the same should be only after ensuring that the same does not result in undue enrichment of the person claiming such refund. The Court should be satisfied that the corresponding benefit or burden was not passed on to the consumer. Such a situation is neither pleaded nor established in this case. Therefore, this Court is not inclined to grant the relief prayed for by the petitioner. The writ petition is accordingly dismissed."

In view of the above this writ petition is also liable to be dismissed.

4. Heard both sides.

5. It is not in dispute that the corporation collected enhanced export permit fee from the sub-contractors and those sub-contractors have not approached this court. It is the corporation, which is claiming on behalf of its sub-contractors. Whether they are identifiable or not I am of the opinion that this writ petition in this shape is not maintainable and is also liable for dismissal in view of the above judgment.

6. The writ petition is accordingly dismissed. No costs.

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C.V.RAMULU, J.

Date: 07th September 2006.
BSB